



THE CONCEPT OF LAW AND DHARMA AND IT'S RELEVANCE IN INDIAN JURISPRUDENCE

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ABSTRACT

Two categories can be used to classify the concept of dharma. One is the normative concept, which is said to have come from a norm, for instance, what one ought to do and what one ought not to do (for example, one ought not to steal and one ought to tell the truth), and the other is how it governs an individual's day-to-day activities in their social and personal life. For example, it outlines the responsibilities and obligations that each person has to their family, society, life, and God. Several Dharmasastra, Vedas, and Smritis are where the word "dharma" first appeared. People were ruled by the idea of dharma in ancient times. Prior to it, there weren't any laws created specifically for the society.

Raj Dharma, the king, was tasked with providing the populace with justice through dharma. Santana dharma, Samanaya dharma, Varna dharma, Savadharm, Guna dharma, Stri dharma, and many others are among the several varieties of dharma. If we delve further into the idea of dharma, we find that dharma and law are connected. The constitution was established as the highest law in the current legal system, and no one is above it. Dharma used to be supreme. There are numerous instances in contemporary times where the judiciary has used dharma to guide its conclusions in legal proceedings.

KEYWORDS: Dharma, sources of dharma, Raj dharma, classification of dharma, dharma and Constitution

INTRODUCTION

Before delving into the specifics, what is dharma? Dharma is not a religion, to start with. In the contemporary world, Dharma is seen as a religion. Yet, religion is a human invention. In the Srimad-Bhagavatam, the word Dharma is defined as the Lord's words and the commandments that draw us near to the Lord, what is Dharma? Right now, it's quite challenging to define Dharma. How does a layperson comprehend Dharma? Dharma simply means our eternal occupational duty in layman's terms. Assume that the halwa you are tasting is spicy even though it is supposed to be sweet. Do you want some of that halwa? and since the response is no, the Halwa's Dharma is to be sweet and when it is not doing it's dharma of being sweet then, what type of halwa is it?

Similar to this, if something's essential nature does not dictate that it should be spicy, pungent, or bitter, then we might argue that it is not upholding its Dharma. Take a tube light or electric bulb, for instance, which is intended to provide light. If that doesn't, what kind of tube light or bulb is it? after all, providing light is part of their fundamental design.

Similar to this, every living thing's intrinsic nature, natural innate or nature is to serve the Lord lovingly and in a profoundly transcendental way as part of their eternal professional obligation. Furthermore, if we don't do that or fulfil our dharma.

As I've already indicated, many people today mistakenly think that Dharma, like Muslim, Hindu, and Christian Dharma, is a religion. Nevertheless, Dharma is intrinsic to nature, which means that it refers to something that is a part of nature. Whereas religion, which we could say was created over time by man, has led to many groups of people adhering to various faiths. Since Dharma cannot be practised nor is it a belief, religion can both be practised and held to be true. Dharma is a responsibility that must be fulfilled. The purpose of spirituality, tolerance, humanity, compassion, and treating everyone with equal love, as well as the path of loving the Supreme lord and being an empowered Compassionate in his hand for the improvement of society this is dharma.

Moreover, the Bhagavad Gita states that everyone has a finite obligation to uphold their Dharma. We get so much from nature, including the grain we eat, which, according to Shree Krishna, arrives with the aid of rain that falls from the clouds. As we rely on nature for so much, it is our obligation to return the favour by carrying out our duties. when we dig a little deeper.

How do I live my Dharma? If you think of yourself as the body, then your bodily Dharma is what you owe to your country, spouse, parents, and other loved ones. Yet after telling Arjun that you are not your body but rather your soul, Shree Krishna continued on in the Bhagavad Gita. When Arjun asks shree Krishna who created Dharma, Krishna replies that whatever you think of as your relatives isn't really your genuine related. Every human being, according to Shree Krishna, creates their own dharma or is accountable for it. So quit moaning about those who are not deserving of your moaning. Arjun then responded, "Hey Lord, on the one hand you're telling me to perform my dharma. This entire argument is incoherent on both sides. You are aware that everyone of us has a motivation for carrying out

our karma, which serves as our source of inspiration. As a result, there is always a motivation behind carrying out the task, and the sense of karma that results from doing so fosters the development of relationships. Shree Krishna concurred with Arjun and affirmed that feelings do lead to the development of relationships. But, this torrent of emotion evaporates just like a drop of water in a fire. They immediately begin cleaning up their home after the death, and all emotions pass away. Thus, the Param Dharma is what you do when you realise that you are the soul and that your dharma is to love and serve God. But the issue is that a regular person cannot simply flee everything because they are living in a household. The route of Krama Yoga is then explained by Shree Krishna. Engage your intellect in Param Dharma, or loving service to God, and discharge your worldly obligations with your body, he advises. This is how maintaining a balance between fulfilling your obligations to the outside world and adoring God in your head.

ORIGIN OF DHARMA

Dharma is thought to have its roots in the Vedas and other early Hindu texts. Dharma, which relates to obligation, conduct, and moral obligations, is seen to be the basis for all human aims both for yourself as a person and for yourself as a member of society. To further exemplify, a teacher or professor's duty is to impart temporary information.

Manu, an old sage, provided significant guidelines for adhering to the dharma. These are self-control, restraint, rationality, forgivingness, honesty, truthfulness, knowledge of learning, sense-control, sanity, and a lack of rage. Dharma was formerly associated with Hinduism's practise of administering justice. But common law has taken the place of dharma in modern society.

Dharma cannot be understood in a singular way because it depends on various contexts and religious beliefs. For instance, Buddhists define dharma as cosmic law. When we speak to dharma in Hindu law, it denotes responsibility or obligations to perform in different facets of life, which explains it as social, legal, and even spiritual duties. In contrast, Jain and Sikh utilise it to illustrate the route of religious practises.

NATURE OF DHARMA

There are many legal schools, however Hindu jurisprudence differs from other schools in that it prioritises obligations over all other rights. This is solely due to Dharma's many hidden meanings, which convey that each person has specific responsibilities. The specifics of these tasks can vary from person to person, location to place, and region to region, but the core principle of Dharma—that each person must fulfil specific obligations or duties—remains consistent. For instance, a king's Dharma is to uphold or validate religious law, but a farmer's Dharma is to feed or nourish the populace.

If we turn our attention to another aspect of Dharma, we are all aware that there are different schools of law. One such school is the natural law school, which holds the view that all laws originated in the past in nature, i.e., that God bestowed rights on human beings. Hence, it is possible to conclude that all social, legal, political, and spiritual rights are manifestations of divinity.

TYPES OF DHARMA

There are various types of dharma some of them are listed below:-

1. **Samanyadharma (Morality, qualities of the soul)** – this type of dharma include mercy, truth, control over the mind, purity, offerings, control over the senses, non-violence, pilgrimage, compassion, honesty, absence of any greed and no one can criticize any of the above.
2. **Varnadharma (Dharma of a class)**- this type of dharma is applicable to the four classes of people which is Brahman (Priest), Kshatriya (Warrior), Vaishya (Businessman), and Shudra (laborer).
3. **Ashramdharma (Dharma according to stages of life)** – this type of dharma is limited to a certain stage of life and it also include four type of ashrams which is Brahmacharyashram, Gruhasthashram, Vanaprasthashram and Sanyasasashram.
4. **Gunadharma (Dharma according to the qualities)** – this type of dharma tell duty to be performed by the person who is holding a particular position or role. for example the duty of king is to nurture his subjects. The impute of five cosmic elements are also called gunadharma.
5. **Svadharma** – this type of dharma tells to practice its own duties, rights which each and every person is being provided with. It is unique dharma because every person has born out of his/her own traits, nature and capacities which is known as swabhav.
For example – the swadharma of the fish is to live in water but milk is better than water, if any fish will insist to live in milk will die.
6. **Sanatana Dharma** - this type of dharma is used by Hindus to refer to Hinduism. In sanatana dharma the term Hinduism is denoted as 'eternal' or set of duties and responsibilities that is prescribed to every individual irrespective of class, creed, caste or sect.

NOTION OF LAW

Several attempts have been made to provide a comprehensive definition of law. The issue "what is law?" has not yet been adequately defined, and there is no single answer to it if we view law as a jurisprudential element.

Numerous philosophers and academics have offered their own interpretations of the law. Certain of them are According to Glanville Williams, the definition of the word "law" relies on the context in which it has been employed. Law cannot be defined, according to some.

John Austin said law was "the command of sovereign".

Ulpian defined law as "the art or science of what is equitable and good."

In jurisprudence there are various schools and each school has defined law on the basis of their nature some on sources or some defined according to society. Some of them also defined law on the purpose of law. Law is a social science it grows and develops with the growth and development of society as society grows law also grow according to them which means laws are made in accordance with the what is good and what is bad for the society. New developments in the society create new problems so laws are made to tackle or handle with those problems. In order to keep peace and harmony in society law must continue to change because it happen that what is good for today might not be good for tomorrow means definition of law given at a particular time not be valid for all time to come. A definition of law which is might be satisfactory for the today's society might tomorrow can get narrow down. So, law should be dynamic in nature.

The Supreme Court of India ruled that law is a watchdog, not a bloodhound, meaning that it keeps an eye on or monitors how governments perform their duties and steps are taken if anything goes against the will of the people. Law cannot be found in any ideology or philosophy that may have influenced someone's thought, but it can be discovered through the experiences of those who created and applied the law.

In the matter of M.C. Mehta v. Union of India, Ranganath Misra CJ, G.N. Ray, and A.S. Anand JJ made the following observations:

According to jurisprudence academics, law is a controller of human behaviour. Yet, no legislation can be successful unless it is embraced by society as a whole. If there is no voluntary acceptance, law cannot be applied effectively. But, this won't be achievable until actions are taken to raise awareness among the populace that laws are essential to their daily lives and that they have standards that must be met.

DISTINCTION BETWEEN LAW AND DHARMA

There is some sort of separation between rich and poor almost everywhere. Yet, the one idea that does not make a distinction between the rich and the poor is dharma. Dharma is a duty, not just a game for the wealthy and powerful; anybody can become one with God by carrying out their dharma.

Dharma is the underlying natural law that exists in India. According to the natural law approach, we all agree that killing someone is wrong but that punishing someone for killing someone is appropriate. Similar to this, dharma also refers to "righteousness" and the road of rightness, both of which we can all follow if we practise dharma.

Since there was no law in ancient Indian civilization, the concept of dharma was used to dispense justice to the populace. Because the king was not above the dharma, the dharma was ultimate and could be grasped from a single simple position. The phrase "Raja Dharma" defined the king's dharma, or obligation, towards his subjects, and it was of the utmost importance. In Raja dharma, the idea that a king is above the law has never been accepted.

But as British power spread, it had a disastrous impact on the idea of dharma because there was no law in India, therefore British officials began implementing western laws in government. Subsequently, natural law with the principles of equality, justice, and morality took its place.

Many people mistakenly believed that dharma was the same as law, however law is a branch of dharma, but dharma as a whole has a greater scope than the law. We can say that dharma and law are intertwined because, in ancient Indian civilization, dharma assisted in the administration of justice, whereas, in today's legal system, law assists in the provision of justice to individuals. One line from the BRHADARANYAKA Upanishad, which reads as follows, can be used to explain the basic notion that led people to uphold the dharma

"Punyo vai punyena karmana bhavati, papah papaneti"

This implies that everyone turns good through doing good things and turns bad through doing negative deeds.

Or, "everyone reaps what he sows and what is good is determined by dharma," to use another expression.

Therefore, it has been emphasised in the current situation as well that those in positions of political authority must adhere to dharmic principles when performing their duties or dispensing justice to individuals. The dharmic principle underlies all spheres of activity, including government and the management of the nation.

DHARMA AND PERSONAL LAWS

The most secular teaching is supposedly Dharma. Everyone has the right to practise their dharma regardless of religion, caste, sex, or class. In reality, the constitution has clauses that distinguish between the underprivileged and other underprivileged sections or include unique language for women.

Dharma, however, is not false; it is a fundamental aspect of the law. Sanatana dharma is referred to as an eternal law that regulates your life, so it doesn't matter if you've attended school or not, whether you're learning science, law, or an art.

It comes from one's actions and conviction in one's virtue; it is not something that is taught in schools or institutions. Hindus have always adhered to Sanatana Dharma because they think that it governs them. There is no legislation or executive order that governs this dharma, and no law has been passed to uphold this Sanatana dharma. Yet, it is still true that all Hindus adhere to Sanatana dharma, regardless of caste or varna.

There are several laws that have been created today that have a dharmic foundation. Every person is subject to their own set of laws. It differs from person to person, therefore someone who is Hindu will be subject to Hindu law, while someone who is Muslim will be subject to Islamic regulations.

Dharma is the source of authority for all laws governing people's private affairs in society, including marriage, inheritance, succession, and divorce.

For instance, The Hindu Succession Act, 1956, which was drafted based on the laws and traditions that Hindus have observed since time immemorial, sets forth guidelines for matters relating to the transmission of property. It also discusses Karta, who serves as the family's head in a Hindu Undivided Family, and his responsibilities to his family, which is a long-standing Hindu custom.

DHARMA AND ITS RELEVANCE IN INDIAN JURISPRUDENCE

The struggle for independence was not just about ending British control; it also included fighting for the fundamental freedom to enjoy one's rights and liberties as a human being. With this in mind, the Constituent Assembly of India drafted the Constitution of India. According to the "Grund norm" idea of positive law schools, the Indian Constitution is the reference.

Similar to how everyone in today's society derives their authority or exercises their freedom from the constitution. Similar to now, dharma was a fundamental rule in ancient times since everything, from granting freedom to delivering justice, was based on the idea of dharma. The same dharma has now been codified in response to changes in viewpoint and way of life, as it was felt that the traditional way should give way to a more pragmatic way of living.

The fundamental rights clause of the constitution incorporates the idea of natural law. The same is true here; what was once dharma has been transformed into basic obligations. Similar to how dharma was founded on morality, ethics, and duties, the fundamental duties are founded on the idea of morality, ethics, and specific obligations that one should have for others. There is no penalty for failing to

carry out our essential obligations, but in order to follow the holy path, one should fulfil their obligations. As is well known, the modern legal system is right-based as opposed to the dharma, which was a duty-based system. These rights are undoubtedly derived from the constitution and are granted to the people so that they may exercise them, but they are also subject to limitations.

There is no shortage of proof from world history, whether it concerns Nazi Hitler or the historic emergency declared by Indira Gandhi. These alone suffice to demonstrate the abuse of authority, as it is believed that when absolute power is granted to a position of authority, it corrupts absolutely and raises ethical concerns.

A court ruling in a habeas corpus case is sometimes referred to as the "blackest day" in Indian legal history since it further undermined public confidence in the judiciary. In this ruling by the judiciary, people's rights and liberties were arbitrarily taken away by the honourable supreme court, but the error was quickly corrected; in the well-known I.C. Golaknath case³, the fundamental rights were declared absolute, and the doctrine of basic structure was later advanced in the Keshvananda Bharti case⁴.

Some courts have reached judgements using the idea of dharma. Narayan Deekshitulu vs. State of Andhra Pradesh & Ors.⁵ is a significant case that addresses the issue of what constitutes dharma. Is dharma equivalent to religion? As was already said, religion is not the same as dharma. Dharma still governs law today through morality. Dharma is secular, possibly the most secular; it is an inner happiness that has witnessed many mortals who are a normal part of human life but has endured forever.

CONCLUSION

Although there is a conflict between dharma and law, as we can see from the discussion above, both ideologies or views are shared. Law is derived from dharma, which is a genus and a specie of it, according to this definition. Some people mistakenly believe that dharma is a religion, but this is untrue since, as the honourable Supreme Court has stated or concurred in numerous decisions as mentioned above, dharma is a social and moral obligation that existed among people long before the rule of law.

There was no idea of the Indian Criminal Code or any of the legislation that were created prior to or after independence in the previous times. Today's laws have their roots in dharma. On the surface, there are no differences or connections between dharma and law, but if we look closer or examine this in depth, we see that they are both inextricably linked.

As a result, "Dharma" is one of the main sources of contemporary law and it is influencing society.

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